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## ATTITUDE OF GERMAN PEOPLE AND GOVERNMENT TOWARDS TRUSTS

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Industrial combinations in Germany have been given many different names by business men as well as by popular writers, but there are really only two principal kinds: The "Kartell" and the "Interessengemeinschaft" (association of interests).

The *Kartell* may be defined as an association of independent establishments of the same trade, organized for the purpose of influencing selling conditions and prices in their trade. For whatever apparent purpose a Kartell may be formed, restriction of competition must necessarily result and a tendency toward monopoly be ever present. As a rule, no single one of the various independent owners or establishments which together form such a Kartell represents more than a small percentage of the whole industry. For example, the "Stahlwerksverband," which is a Kartell controlling ninety-five per cent of the steel trade, embraces thirty-six independent steel plants; the largest single plant in the "Stahlwerksverband," however, is the Phoenix Steel Works, which does only about eleven per cent of the whole steel business.

The Stahlwerksverband is one of the most highly developed Kartells and for that reason as well as for its great size and importance deserves more than a passing mention.<sup>1</sup> In it the sale of the entire output of all the members, which is limited by the Verband, is placed in the hands and control of one central body, called the "Stahlwerksverband-Aktiengesellschaft," i.e., the Steel-works Stock Company. This body might be called the selling agent. It is capitalized at \$100,000. The shares are held exclusively by its organizers.

The Stahlwerksverband, considered as a whole, is the largest industrial concern in all Europe with the exception of the Prussian-Hessian railroad. The Stahlwerksverband represents through the capitalization of its members about \$325,000,000.

Paragraph 2 of the syndicate agreement states that "the object

<sup>1</sup>This paper was written previous to the new development in the steel industry in Germany (May, 1912).

of the enterprise is the purchase and sale of iron and steel products of all kinds, the purchase of industrial enterprises of all kinds and the management of enterprises of all kinds intended for the storing, selling and transporting of iron and steel products as well as a participation in all such enterprises." The Stahlwerksverband in spite of the terms of this Syndicate agreement has not yet engaged in any enterprises except the purchase and sale of iron and steel products. This is in marked contrast to the coal syndicate which recently has taken a financial interests in the transportation of coal and in the coal business in general.

A highly developed Kartell, which like the Stahlwerksverband, has a central sales agency, is generally called "*Syndikat*." In a *Syndikat* there is often nothing left to the discretion of the individual plant owner but the method of production, for the purchase of raw material as well as the sale of the finished product may be determined by the association. And this is sometimes carried to the extent of dictating to each plant owner the quantity and quality of his production.

We often encounter the interesting fact that one concern is a member of a great number of Kartells according to the number of its products. The Phoenix Iron and Steel Works for instance belonged at one time to twelve different Kartells, such as the coal, pig-iron, rail, steel syndicates, etc. The disadvantage to the individual Kartells resulting from this diversity of interest and the conflicting influences which are thereby brought to bear within the Kartells themselves are apparent.

The second kind of industrial combination which is known as the "*Interessengemeinschaft*," or Association of Interests, is really the most developed form of combination and the closest approach to what in this country is called a trust, for in this association of interests two or more independent establishments amalgamate, usually with a profit-sharing agreement and sometimes with an exchange of shares.

Having thus defined the three most common terms relating to industrial combinations, namely "Kartell," "Syndikat" and "Interessengemeinschaft," we come now to the question of the attitude of the German people toward industrial combinations.

The majority of the German people of every class is in favor of industrial combinations.

This faith in industrial combinations seems to be due, first, to the understanding of the economic necessity of such combinations; second, to the fact that the development of the German industrial combinations has been logical, gradual and open. Such development was possible because, as will appear later, it was from the beginning fostered and not persecuted by the law-makers.

Combinations in Germany are economically due to the same fundamental conditions of modern industrial life that have obtained in America, namely, the increased facilities for communication and production based on science and technic, as well as the birth of a world market. Just as it was truly said of the American colonies at the time of the Revolution that they must all hang together if they were to avoid hanging separately, the present industrial situation demands combinations. They are not an invention of capitalistic egoism, but the children of necessity.

On December 31, 1908, all Kartells and syndicates in the iron trade ceased. Cut-throat competition immediately ensued. The manufacturers were happy if they earned expenses. The price for pig-iron went down to \$5 a ton. Chaos continued until the old adage that misery loves company found another application, and the warring producers joined together again in new agreements.

To illustrate that this growth was gradual it may be well to show briefly the steps through which the Kartells developed.

The simplest and crudest form of combination is the "Konditionenkartell." This is very often nothing but an informal agreement. Its purpose is to better and unify selling conditions, and to prevent credits of too long a duration, too high rebates, discounts, etc. Agreements of this kind may still be found in the textile industry, in which combinations have only recently begun to develop.

The second step is the "Price-Kartell." The members make up a price list and agree to respect not only certain selling conditions but also prices. Such agreements go sometimes so far as to divide the whole market among the members, by assigning to them certain territory, or by limiting them to a certain amount or kind of production.

I have already stated what the theorists call a "Syndikat;" it is the "Selling-Kartell" (*Verkaufskartell*).

But even the Kartell in its highest form is not always powerful enough to meet present-day contingencies, and the next step towards

more powerful and at the same time more economic concentration is the "association of interests" (*Interessengemeinschaft*). This is illustrated by the amalgamation which is constantly going on in Germany in the electrical and the chemical industries and in and between the coal and iron industries.

The fact that there existed four hundred and fifty Kartells in 1902, embracing about 12,000 concerns, which number has increased probably to nearly six hundred to-day, is ample proof that the producers in Germany are in favor of combinations. But as the real proof of the pudding is in the eating, or better, in the consuming of it, it is most significant that the consumers in general have shown their approval of this tendency. Thus we find associations not only among the industrial consumers, as appears below, but also consumers' associations among the retailers and even among individuals for their daily household necessities. The fact is that associations like co-operative companies in the United States exist to a very large extent throughout Germany.

It is a well-known fact that each stratum of producers is both a consumer and a producer. It has therefore resulted quite naturally, although Kartells were originally only producers or selling Kartells, that they soon became also consumer or buying Kartells in their relations with producers of materials in all earlier stages of manufacture.

For example, the different German railroads, the Prussian, Bavarian, Saxon, etc., have formed an association for establishing standards for rails and other materials with which the Stahlwerksverband has to comply. The railroads together need about one-fourth of its whole production. Their wishes, therefore, carry enough weight to be respected. The Stahlwerksverband, in its turn, has not only agreed upon its selling conditions and sales prices, but on the other hand, by reason of its large consumption of pig-iron, is able to dictate its conditions to the pig-iron syndicate, which again exerts the same double influence, first, toward the Stahlwerksverband as its customer, and second, toward the coal syndicate as the producer of its most important raw material.

These consumer Kartells may not always be considered proof of the fact that the consumers favor the Kartell, but they surely offer a very interesting indication of the attitude which consumers take. Some people might argue that the consumer Kartells are

formed for the purpose of fighting the producer Kartells and are therefore an evidence of direct opposition to the new condition of things. It is my personal opinion, however, that there is no basis at all for saying that consumers disapprove of industrial combinations; on the contrary, the consumers realize the advantages of the Kartells for the nation as a whole and consider their existence inevitable. The consumer Kartells are organized for this very reason, namely, to be able to deal advantageously with the inevitable.

It may be of interest to quote here some chamber of commerce resolutions. A recent report of the Chamber of Commerce of Bonn states that "it has to be emphasized again and again that combinations are absolutely necessary in our time and that they have proved for the most part beneficial. They alone have been able to check the boundless competition with all its dangers to social economy. They have eliminated competition by cutting prices and has substituted competition in economies of production. Even the commission houses and dealers who originally disapproved of them, in most cases have become convinced more and more that their own interests are, in general, best protected by them."

In the first year of the existence of the Stahlwerksverband the Chamber of Commerce of Luedenscheid, which is situated in one of the most important districts using semi-manufactured material, resolved, "that the industry suffers from the conduct of the Stahlwerksverband which exploits for its own benefit the conditions created by the protective tariff." The same chamber of commerce in its report of the following year no longer objected to the Stahlwerksverband and praised the "beneficial influence of the steadiness of prices as created by the coal syndicate."

The Chamber of Commerce of Bochum recognizes that "fair and moderate prices are best assured by large combinations."

It adds that "it has to be pointed out that the works which buy semi-manufactured products from the Stahlwerksverband and convert them have worked with good profit."

Inasmuch as I am a devout believer in the beneficial results which are to be obtained from a reasonable application of the principles of scientific management, and inasmuch as I realize how necessary it is for the introduction of scientific management in its highest form that each industry should, as far as possible, be concentrated horizontally as well as vertically, some people might call me prej-

udiced in my presentation of the subject. I therefore give you the following quotations from two of our socialistic labor leaders whom surely no one could accuse of being prejudiced in favor of employers' combinations:

Mr. Hue has frankly acknowledged "that combinations secure higher wages and better and safer conditions for the laborers; and more uniformity in their work."

Mr. R. Calwer said "that the organization of Kartells should not only be greeted but also aided by the socialistic party." It is an actual fact that associations of workmen have been in some cases a substantial aid in forming Kartells among the producers, as the workmen have considered it as the best method of obtaining better working conditions.<sup>2</sup>

The many papers and books written on industrial combinations, the essays and articles published in the "Kartellrundschau," a monthly publication entirely devoted to this subject, show that political economists take almost universally a favorable attitude.

Our theorists and progressive producers are beginning to recognize the fact that inasmuch as unification of management assures quicker response to market conditions and more ease in specialization at the different plants, a fusion or amalgamation—please do not call it "trust"—of the various independent producers is economically a more perfect organization than our Kartells.

Professor Conrad, from the University of Halle, says: "Only by means of a monopolistic union can a bird's-eye view of the world's demands be obtained and production regulated and divided up among the members so that the equilibrium of the world's industry and market will not be disturbed."

In the great majority of our industries, however, combination has not advanced beyond the Kartell stage. As I stated above, only the electrical, chemical and coal industries have so far united in a closer form than the Kartell.

## II.

The second part of my subject treats of the policy which the government pursues in its relations with industrial combinations.

The attitude of the government is expressed in various ways.

<sup>2</sup> A recent example of this is to be found in a certain kind of engraving establishments (Walzengravieranstalten).

First, by legislation<sup>3</sup> and by the decisions of courts interpreting the statutes; second, by the part which the government itself takes in the active management of industrial enterprises.

In the eighties of the last century the government found itself confronted by a new economic development. Convinced that this development had grown out of an irresistible natural law, the government did not attempt to check it, but tried to guide it into the ways most beneficial to the country's welfare.

When in 1903 the forming of large combinations in the coal mining industry, banking and inland navigation, attracted notice, the Imperial Department of the Interior started an investigation on this subject with the purpose of determining whether or not new and more stringent legislation was necessary. Debates presided over by the Department of the Interior were arranged between manufacturers, managers, officers of large Kartells, professors of political economy, etc. At the end of all these debates the conclusion was reached that although in some respects great industrial combinations were undesirable, nevertheless the laws which already existed were adequate to cope with the undesirable features, and further it appeared that the great advantages which result from them more than counterbalance the disadvantages; and that, therefore, neither private interests nor the interest of the country at large were being endangered by the development of these combinations.

At about the same period that these debates were taking place, test cases were instituted against certain of the Kartells. In these test cases the monopolistic tendencies of the Kartells were pointed out, and it was alleged that they were unconstitutional and in violation of the statutory trade regulations (*die Gewerbeordnung*) because by eliminating competition they interfered with the freedom of trade. The cases went through all the courts up to the highest court of the empire, the Reichsgericht in Leipzig, which handed down the fundamental decision that "the forming of Kartells was not only a justifiable manifestation of the instinct of self-preservation, but was a step actually serving the best interest of the country as a whole."

After that the Kartells were attacked on the ground that the agreements upon which they were based were void under Paragraph 138 of the Civil Code (*Bürgerliches Gesetzbuch*) as "gegen gute

\* The power to legislate concerning commerce and trade belongs to the empire not to the several states. (Art. 4 of the German constitution.)

Sitten," which, literally translated may be rendered as "contrary to good custom, or good morals." If the court had recognized this point of view it would have meant that each Kartell member might disregard its Kartell agreement with impunity and it would have made it impossible to enforce any of the penalties for non-fulfilment of the Kartell agreement.

It is of great importance for the Kartells that Book 10 of the Code of Civil Procedure gives the right and provides a method for taking all litigations resulting from a Kartell agreement out of the jurisdiction of the ordinary courts and substituting arbitration courts. The importance of this special jurisdiction is shown best by the fact that the enemies of the Kartells demand their abolition. A quick technical expert proceeding is provided hereby which decides definitely and does therefore not permit obstructions possible in the ordinary court procedure.

It was also alleged that the Kartells were forbidden by the law against unfair competition (*Gesetz gegen den unlauteren Wettbewerb*)<sup>4</sup> and also by the penal code (*Strafgesetzbuch*), but the courts refused to recognize any of these arguments and the Kartells still live and prosper.

Germany, as you know, has to-day a protective tariff. It has been suggested that the development of the Kartells could be checked by lowering the tariff and opening the German market more fully to foreign competition. No proposition intended to lower the tariff, however, is looked upon with favor by the German government and all these suggestions have been rejected.

<sup>4</sup> It seems to me that the importance of this statute as a provision against undesirable features of industrial combinations especially is somewhat overestimated. It might be of value therefore to give the following outline of the statute:

Section 1 refers to competition which is considered against good morals (*contra bonus mores*).

Sections 3-10 refer to misrepresentation of facts in advertisements, etc., relating to the advertiser's own business.

Section 11 refers to the right of the Federal Council (*Bundesrat*) to demand certain standard weights and measures for certain goods *e. g.* beer.

Section 12 refers to the offer of gratuities or other advantages to an employee in order to obtain a favored position in connection with the purchase of goods.

Section 13 refers to sections 3 to 12 and sets forth the conditions necessary for civil liability.

Section 14 refers to damaging of reputation and credit by statements of unprovable facts, or Section 15 by statements against better knowledge.

Section 16 refers to the misuse of trade marks, names, etc., likely or intended to create errors or mistakes.

Section 17 refers to the disclosure of business secrets.

Section 18 refers to the use of business secrets by an employee for his own benefit.

Section 20 refers to offering inducements to disclose business secrets.

The rest of the thirty paragraphs define no more torts but deal largely with procedure.

Probably the most interesting feature of the government's policy toward industrial combinations is the active part which it takes in their management. In Germany, of course, the railroads, the telegraph and telephone, and the postal and express services are all government monopolies.

Furthermore, the government has its finger, sometimes its whole hand, in all the more important industrial combinations.

For example, in the potash industry, under the recent act, at the beginning of each year a total expected sale is determined and to each producer is allotted a certain percentage of this expected sale. It is also predetermined what part of each producer's allotted percentage may be sold in the domestic market and what may be exported. If the total sale of any producer exceeds his allotted percentage a duty must be paid to the government on this excess. Furthermore if a smaller quantity is sold by any producer in the home market than that provided for a proportionate decrease is made in the sales permitted in the foreign market. The price in the foreign market can never be lower than the price in the home market.

Again, in the coal industry, the government is influential because it is itself a large mine owner and operator. The government uses its own coal on its railroads. By an arrangement made within the last few months, the coal which it does not need for itself, it sells through the coal syndicate in precisely the same way that the other members of the syndicate sell.

The government, however, has reserved the right to withdraw from the syndicate, in case it believes that the syndicate is selling the coal at prices which are too low to give the government a fair profit, or on the other hand too high for the public welfare.

It has been said that the best policy to be pursued with combinations would be governmental enterprises strong enough to represent a working majority in the trade. In 1903 and 1904 the government started to follow this policy and wanted to obtain a larger influence in the coal mining industry. It wanted to acquire one of the largest mining companies, the "Hibernia," but secured only a minority, the owners of the remaining stock having been combined by the coal syndicate in a stock company under conditions which made it impossible for the government to obtain any more stock.

After this unsuccessful venture into "High Finance" the govern-

ment decided to give up this policy and practically to join the syndicate as shown above.

Coming now to the iron and steel industry, the government, although not a large iron and steel producer itself, as the manager and owner of the railroads is a customer, as mentioned before, for about one-quarter of the German output. Its power to influence the iron and steel trade is therefore manifest.

I am informed that a bill has just been introduced in the Reichstag whereby the government shall have the right of supervision over all Kartells, similar to the supervision which the various state governments in this country exercise over the insurance companies. The fate of this bill is of course still uncertain.

It seems to me that the speech of the Secretary of Commerce, Dr. Delbrueck, made in the Reichstag on the fourth of March, 1912, will show best, in a concise way, the government's attitude towards this matter, and its future policy. He said: "Even the gentlemen of the socialist party have well understood that syndicates are necessary in the modern development of business and to a certain extent useful. The accord between demand and supply bring about a stability of prices and consequently of wages. Therefore, as long as the syndicates do not overstep the bounds of the powers given them by the ordinary statutes, we have neither reason nor right to interfere with them."

"The united governments (Prussia, Bavaria, Saxony, etc.) comprising the Empire as represented in the 'Bundesrat' (federal council) are of the opinion that especially the coal syndicate and the Stahlwerksverband are members of our economic organization which cannot be dropped forthwith, even if someone should disapprove their policy in some particulars.

"I would regret it extremely if the agreement of the coal syndicate should not be renewed in 1916 when the present agreement expires.

"It is not possible to answer the general question whether or not the state as owner of industrial enterprises should join syndicates. This must be decided on the merits of each individual case. The right of the state to join a syndicate in case it believes it wise for economic reasons cannot be contested. It is assumed of course, that the economic activity of the syndicate in question will not bring the government into discord with its economic and political

functions. Sometimes it may be even the obvious duty of the government to enter into a syndicate if it can thereby further important political and economic ends."

In summing up, I should like to say that the German people and the German government seem to feel that the tendency toward combinations in all forms of industry and business is a result of modern scientific and economic conditions; that combinations are necessary for the soundness of the economic life of the country by securing stability in commerce and sustaining thereby its buying capacity; that the forming of associations of similar interests, aided by a reasonable tariff, is desirable and appropriate to benefit not only the manufacturer but also the workman and the consumer; that the tendency toward combinations is not a caprice of finance or the result of the selfishness of the few; that it is not only national but international; that it is here to stay, and that it is only a question of regulating the stream, not of damming it.